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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,091	10/17/2003	Sudhin Datta	2002B141/2	9100

23455 7590 05/31/2006

EXXONMOBIL CHEMICAL COMPANY
5200 BAYWAY DRIVE
P.O. BOX 2149
BAYTOWN, TX 77522-2149

EXAMINER

NUTTER, NATHAN M

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,091

Applicant(s)

DATTA ET AL.

Examiner

Nathan M. Nutter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 31-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 20 December 2005 has been entered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-29 and 31-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-64 of copending Application No. 10/962,312. Although the conflicting claims are not identical, they are not patentably distinct from each other because the inclusion of a polyamide resin is within the claim language herein recited. Further, the application employs an isotactic polypropylene having a melting point of at least 110°C, a grafted functionalized propylene-based elastomer, which at paragraph [0039] includes ethylene copolymers as recited for component “b),” herein, and “an ungrafted polyolefin having a melting point of less than 100°C,” which at paragraph [0049] may include propylene as a comonomer thereof.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-29 and 31-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,288,171. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent may embrace the “a)” isotactic polypropylene (claim 3 of the reference), an ethylene-propylene-diene elastomer, which embraces component “b),” and a “semi-crystalline polypropylene (having) a melting temperature of at least 120°C,” component “c),” (claim 7 of the reference).

Claims 1-29 and 31-35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of copending Application No. 10/688,091. Although the conflicting claims are not identical, they are not patentably distinct from each other because the various properties of each of the recited polymers in the copending application may include those recited and claimed herein, and the claims of the copending application would embrace the heterophase composition recited herein.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-29 and 31-35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/896,549. Although the conflicting claims are not identical, they are not patentably distinct from each other because the various properties of each of the recited polymers in the copending application may include those recited and claimed herein.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-29 and 31-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,639,020. Although the conflicting claims are not identical, they are not patentably

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distinct from each other because the broad claims of the reference show the constituents that are claimed essentially as recited herein as to scope and characteristics.

Claims 1-29 and 31-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,750,284. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims do not exclude the presence of other constituents. Otherwise, the polymeric constituents are essentially the same having the same characteristics as recited and claimed herein.

Claims 1-29 and 31-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,867,260. Although the conflicting claims are not identical, they are not patentably distinct from each other because the recitations of the constituents in broad claim 1 of the patent include the polymers recited herein, as shown by the dependent claims of the reference.

Claims 1-29 and 31-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,916,882. Although the conflicting claims are not identical, they are not patentably distinct from each other because the resins employed are essentially identical as shown

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by the dependent claims. The instant claims do not exclude the presence of other constituents.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-29 and 31-35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Datta et al (WO 00/01766), cited by applicants.

The reference to Datta et al teaches the production of a continuous phase of polypropylene having a melting point of 110°C and a heat of fusion greater than 75 J/g, having dispersed therein a second polymer component that may have ethylene/ α -olefin present as less or equal to 10 weight % of the blend and may, further, have an additional polymer having a heat of fusion of less than 75 J/g. Note the paragraph bridging page 5 to page 6 for the employment of isotactic polypropylene as the FPC. Further, note page 6 (lines 11-24) and page 7 (lines 2-19) for the FPC. Note page 7 (line

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20) to page 8 (line 17) and page 9 (lines 1-18) for the SPC. Note page 10 (lines 3-13) for the SPC2 employed, and page 10 (line 25) to page 11 (line 9) for the combination. Further, note the many Examples and claims of the reference.

Claims 1-29 and 31-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Finerman et al (US 6,288,171).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The reference shows the claimed invention in the claims and the many Examples.

Claims 1-29 and 31-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Brant (US 6,639,020).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

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the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The reference shows the invention in the claims.

Claims 1-29 and 31-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Dharmarajan et al (US 6,750,284).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claims 1-29 and 31-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Datta et al (US 6,867,260).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

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Claims 1-29 and 31-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Brant (US 6,916,882).

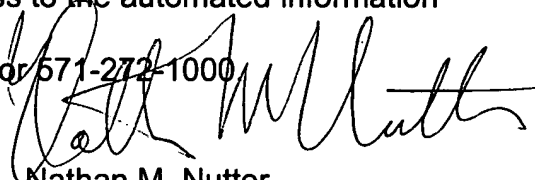
The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

26 May 2006